

UAB  
Acc - 5/14/85

85-14-C

ORDER FOLLOWS (NEXT PAGE)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IV

IN THE MATTER OF.

COAL TAR PIT

WEST SECOND AVENUE

and

CONTAMINATED MATERIAL

JOHN DAVENPORT ROAD

ROME, GEORGIA

E. C. SYSTEMS, INC.

Respondent

DOCKET NO. 85-14-C

ORDER PURSUANT TO SECTION 106(a) OF THE  
COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
COMPENSATION AND LIABILITY ACT, 42 U.S.C. §9606(a)

The following ORDER is issued to E. C. Systems, Inc., (Respondent) pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §9606(a), and delegated to the Administrator of the Environmental Protection Agency (EPA) by Executive Order 12316 dated August 14, 1981, 46 Federal Register 42237 (1981) and further delegated to the Regional Administrator of Region IV, EPA. Notice of the issuance of this ORDER has been given to the State of Georgia.

EPA has determined that there may be an imminent and substantial endangerment to the public health and welfare and the environment due to the release and threat of a release of hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14) from the following locations (the "Sites"):

An abandoned subterranean coal tar pit located on property at 102 West Second Avenue in Rome, Georgia, and contaminated excavated material which was hauled to an area off John Davenport Road in Rome, Georgia.

This ORDER directs you to undertake action to protect the public and the environment from the endangerment.

FINDINGS OF FACT

1. Respondent owns a parcel of land located at 102 West Second Avenue in Rome, Georgia.
2. During construction activities on the property on or about April 12, 1985, Respondent unearthed an abandoned subterranean coal tar pit. Several truck

loads of material from the pit were excavated and transported to an area off John Davenport Road outside of Rome. The coal tar pit located on the Respondent's property and the excavated material off John Davenport Road are hereinafter referred to as the "Sites".

3. After review of analysis of the waste, the Georgia Environmental Protection Division (EPD) has determined that the material in the coal tar pit, and the material which was excavated and dumped off John Davenport Road, are hazardous wastes due to the presence of phenols, naphthalene, fluoranthene, chrysene, acenaphthylene, and other aliphatic hydrocarbons.
4. Phenol is a tumor promoter in laboratory animals. Dermal contact can result in corrosion of the skin. Inhalation causes central nervous system disorders such as weakness or dizziness, and edema in the lungs. Damage to the liver kidney, pancreas, and spleen have also been observed after inhalation. Ingestion causes gastrointestinal distress and corrosion of the lips, mouth, tongue, esophagus, and stomach.
5. Chrysene is a demonstrated carcinogen in laboratory animals.
6. The Sites are in a highly populated area. Access to the Sites is unrestricted and the wastes present on-site are not secured.
7. The pit located off Second Avenue in Rome is within two hundred feet of the Oostanaula River. The material off John Davenport Road is within the drainage area of Little Dry Creek.

#### CONCLUSIONS OF LAW

1. Respondent is a person as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
2. Respondent is an owner within the meaning of Section 101(20) of CERCLA, 42 U.S.C. §9601(20).
3. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
4. The substances found on-site, including phenols, naphthalene, chrysene and fluoroanthene are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
5. The presence of hazardous substances at the Sites, as well as their migration to surrounding soils and potential migration to groundwater and surface water, constitutes the release and threat of release within the meaning of Section 101(22) and 106(a) of CERCLA, 42 U.S.C. §9601(22) and §9606(a).

DETERMINATIONS

Based on the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, and the entire record of this proceeding, the Regional Administrator has determined that:

1) The release and threat of release from the Sites may present an imminent and substantial endangerment to the public health or welfare or environment. 2) In order to protect public health and welfare or the environment, it is necessary that action be taken to mitigate the release and threat of release of hazardous substances from the Sites into the environment; and 3) The actions required in this ORDER are consistent with the National Contingency Plan.

ORDER

Based on the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DETERMINATIONS it is hereby ORDERED that:

- 1) Respondent shall initiate by no later than May 28, 1985, and complete  
• within thirty (30) working days thereafter, the following measures, which shall be undertaken at the direction and approval of EPA through its On-Scene Coordinator (OSC) and consistent with the National Contingency Plan:
  - a) Excavate all coal tar and contaminated soil from the pit located off West Second Avenue in Rome, Georgia.
  - b) Transport and dispose of at an approved hazardous waste disposal facility, all excavated material and contaminated soil. This would include both the material removed from the pit and the material now stored off John Davenport Road.
2. All actions carried out by Respondent pursuant to this ORDER shall be done in accordance with all applicable federal, state, and local laws.
3. Upon request, Respondent will provide EPA with split samples of any samples collected in accordance with the requirements of this ORDER.
4. All response work performed pursuant to this ORDER shall be under the direction and supervision of a qualified professional engineer or certified geologist with expertise and experience in hazardous waste site cleanup. Respondent shall notify EPA as to the name and address of such engineer or geologist and of any contractors and subcontractors to be used in carrying out the terms of this ORDER in advance of their involvement at the Sites.
5. Respondent shall consult with EPA in planning for sampling and analysis. Respondent shall provide a quality control report to EPA certifying that all activities have been performed as approved.
6. Access to the Sites shall be provided to EPA employees, its contractors, and consultants for the purpose of carrying out any necessary actions related to this removal action.

7. Nothing herein shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result past, current or future operations or ownership of the Sites by the Respondent, his agents, contractors, lessees, successors, or assigns.
8. Notwithstanding compliance with the terms of this ORDER, Respondent may be required to take further actions as necessary to abate the endangerment posed by conditions at the Sites.
9. In the event that the OSC determines that activities implemented under this ORDER, or any other circumstances or activities are creating an imminent and substantial endangerment to the health and welfare of the people on the Sites or in the surrounding area or to the environment, the Regional Administrator of EPA, Region IV, may order Respondent to halt further implementation of this ORDER for such period of time as necessary to abate the endangerment.
10. The United States shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by the Respondent, his employees, agents, or contractors in carrying out activities pursuant to this ORDER, nor shall the federal government be held as a party to any contract entered into by the Respondent or his agents in carrying out activities pursuant to this ORDER.
11. All submittals and notifications to EPA pursuant to this ORDER shall be made to Mr. Thomas W. Devine, Director, Waste Management Division, U. S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, and Mr. Robert W. Caplan, Office of Regional Counsel, at the same address.
12. This ORDER is effective upon receipt notwithstanding any conference requested by Respondent.
13. This ORDER shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, assigns, and contractors.

#### OPPORTUNITY FOR CONFERENCE

Except as provided below, this ORDER is effective upon receipt. With respect to those actions required above, you must notify EPA by telegram or by telephone within two (2) days after receipt of this Order, with follow-up written confirmation, within forty-eight (48) hours of initial notice whether you intend to comply with the terms of this ORDER. In addition, if you wish to confer with EPA to discuss this Order, its applicability to you, the correctness of any factual determinations upon which the ORDER is based, the appropriateness of any action which you are ordered to take, and any other relevant and material issue, you may request an informal conference at the EPA Regional Office located at 345 Courtland.

Street, N.E., Atlanta, Georgia. Such a request must be made by telegram or by telephone within two (2) days after receipt of this ORDER. Respondent may appear in person or by attorney or other representative at any conference held at his request. However, you are hereby placed on notice that, notwithstanding any request for a conference, EPA will take any action which may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and that Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. §9607, for the costs of these actions. Any request for a conference should be made to:

Mr. Harold Taylor  
Waste Management Division  
Emergency & Remedial Response Branch  
U. S. Environmental Protection Agency  
Region IV  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365  
(404) 881-2930

or

Mr. Robert W. Caplan  
Office of the Regional Counsel  
U. S. Environmental Protection Agency  
Region IV  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365  
(404) 881-2641

VIOLATIONS OF ORDER

Violation of this ORDER by the Respondent through willful violation or failure or refusal to comply with this ORDER, or any portion thereof, may subject you to a civil penalty of up to \$5,000 for each day in which such violation occurs or such failure to comply continues pursuant to Section 106(b) of CERCLA, 42 U.S.C. §9606(b). Failure to comply may also subject Respondent to civil penalties and/or punitive damages in an amount of three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §9606(b) and §9607(c)(3). Nothing herein shall preclude EPA from taking such other actions as may be necessary to protect the public health and welfare or the environment and recovering the costs thereof.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

JACK E. RAVAN  
REGIONAL ADMINISTRATOR

HTAYLOR.fga:05-10-85